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10 | *Attorneys for Non-Party Spotify USA Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

1 I, Shane M. Palmer, declare as follows:

2 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel
 3 to Non-Party Spotify USA Inc. ("Spotify"). I am a member in good standing of the Bars of the
 4 States of New York and California and a member of the Bar of this Court. I have personal
 5 knowledge of the facts set forth in this declaration and can testify competently to those facts.

6 2. I submit this declaration pursuant to Local Rule 79-5(d) in support of
 7 Spotify's Administrative Motion to Seal Portions of SPOT-EPIC-00000925 and
 8 SPOT-EPIC-00001023, submitted concurrently herewith.

9 3. Spotify produced the documents bearing Bates numbers
 10 SPOT-EPIC-00000925 through SPOT-EPIC-00000929, and SPOT-EPIC-00001023 through
 11 SPOT-EPIC 00001025, to Apple Inc. ("Apple") and Epic Games, Inc. ("Epic") in response to
 12 subpoenas that Apple and Epic served on Spotify in this action pursuant to Federal Rule of Civil
 13 Procedure 45 on December 2, 2020, and December 8, 2020, respectively (the "Subpoenas").

14 4. Prior to producing any documents to Apple and Epic in response to the
 15 Subpoenas, I spoke with counsel for Apple and Epic and indicated that certain information sought
 16 by the Subpoenas constitutes Spotify's trade secrets. I explained to counsel for Apple and Epic
 17 that Spotify would not produce documents containing its proprietary, competitively sensitive
 18 business information except pursuant to a supplemental protective order that would ensure
 19 additional protections for Spotify's information and prohibit Apple and Epic from sharing
 20 Spotify's documents with their employees or in-house counsel.

21 5. At Spotify's request, on February 4, 2021, Apple and Epic jointly filed a
 22 Stipulated Supplemental Protective Order Governing Discovery from Spotify ("Supplemental
 23 Protective Order") (Dkt. No. 320). The Court entered this Supplemental Protective Order, as
 24 modified by the Court, on February 11, 2021 (Dkt. No. 334).

25 6. On February 16, 2021, Spotify made a production of documents to Apple
 26 and Epic in response to the Subpoenas, which included the documents produced by Spotify bearing
 27 Bates numbers SPOT-EPIC-00000925 through SPOT-EPIC-00000929, and
 28 SPOT-EPIC-00001023 through SPOT-EPIC-00001025. When it produced these documents to

1 Apple and Epic, Spotify properly designated them as “SPOTIFY HIGHLY CONFIDENTIAL –
2 OUTSIDE COUNSEL EYES ONLY” pursuant to Section C of the Supplemental Protective Order.

3 7. On May 11, 2021, counsel for Epic informed me by email that Epic may
4 use SPOT-EPIC-00000925 and SPOT-EPIC-00001023 at trial. Epic's counsel indicated to me by
5 email that Epic does not object to Spotify's filing of a motion to seal those documents.

6 8. On May 12, 2021, I emailed counsel for Apple to ask whether Apple
7 consents to Spotify’s filing of a motion to seal SPOT-EPIC-00000925 and SPOT-EPIC-00001023.
8 Apple’s counsel confirmed by email that Apple consents to Spotify’s filing of a motion to seal
9 those documents.

10 9. True and correct copies of the document that Spotify produced to Apple and
11 Epic bearing Bates numbers SPOT-EPIC-00000925 through SPOT-EPIC-00000929 are attached
12 hereto as Exhibit A, in both redacted and unredacted form. True and correct copies of the
13 document that Spotify produced to Apple and Epic bearing Bates numbers SPOT-EPIC-00001023
14 through SPOT-EPIC-00001025 are attached hereto as Exhibit B, in both redacted and unredacted
15 form. The unredacted version of Exhibits A and B have been highlighted to indicate the portions
16 of the documents that Spotify is seeking to seal in the instant Motion.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed
18 this May 12, 2021, at Brooklyn, New York.

/s/ Shane M. Palmer
Shane M. Palmer

ATTESTATION

2 I, Brendan P. Cullen, am the ECF User whose ID and password are being used to
3 file this document with the Clerk of the Court using CM/ECF, which will send electronic
4 notification of such filing to all registered counsel. In compliance with Local Rule 5-1(i)(3), I
5 hereby attest that all signatories concur with this filing.

6 | Dated: May 12, 2021

/s/ Brendan P. Cullen
Brendan P. Cullen